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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-221
Regulation title	Additional Daily Supervision Rate Structure
Action title	Establish rate structuring for a component of foster care maintenance payments and standards for local departments providing additional daily supervision
Date this document prepared	April 15, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed action is to establish a requirement for the use of an approved Department of Social Services (DSS) process to assess a child for the purpose of determining the additional daily supervision component of the foster care maintenance payment. It will also establish standards for local departments of social services to use when providing additional daily supervision. This regulation is needed to ensure that Virginia meets federal requirements for seeking federal reimbursement by having a statewide rate structure for local departments to use in determining the additional daily supervision component of the foster care maintenance payment. Standards for providing additional daily supervision are needed to ensure a comprehensive approach and consistency statewide.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 63.2-217 of the Code of Virginia provides the general authority for the development of regulations to carry out the purpose of Title 63.2. The Administration for Children and Families (ACF) advises that a statewide rate system is required in order to draw down Title IV-E funds related to foster care maintenance and adoption assistance. ACF cites 42 U.S.C. 673 and their policy announcement, ACYF-CB-PA-01-01 on issues related to rate systems. Failure to have a statewide rate can result in denial of federal funds.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

This regulation will help protect children by ensuring that those who need additional daily supervision have their needs appropriately identified and that the associated parental payment correlates with the child's identified needs. The regulation will also provide standards for local departments of social services that operate programs and provide services to address these children's needs. There is currently no correlation between the amount included as additional daily supervision in a foster care maintenance payment and the needs of the child. This regulation is necessary to achieve consistency across the state.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

This regulatory action will require the use of a process developed by DSS to evaluate certain children's needs. This will guide agencies in determining the additional daily supervision portion of the maintenance payment made for these children. The regulation will also provide standards for providing additional daily supervision for agencies that wish to provide those services themselves rather than contract with other providers.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

DSS has been reviewing the issues associated with the additional daily supervision portion of the foster care maintenance payment for over two years. A workgroup with diverse representation has studied Virginia's data related to these payments and reviewed the methods other states have used to address identifying children's needs and making a consistent and fair additional payment to help address those needs. The process under development by DSS is the product of this extensive evaluation.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

DSS is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. DSS is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Phyl Parrish at 7 North Eighth Street, Richmond, Virginia, 23219. Telephone number: 804-726-7926, email address: phyl.parrish@dss.virginia.gov. Fax number: 804-726-7985. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

DSS is using an advisory committee in the development of this regulation. Membership on the committee represents DSS and Office of Comprehensive Services staff, representatives of local departments of social services, and representatives of licensed child placing agencies. Additional participation will be sought for work on specific issues as they arise.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation is intended to address the identification of needs, provision of services, and associated payments to foster families in Virginia. The regulation supports DSS' and other child serving agencies goal to provide high-level, consistent care for children in the foster care system. By creating a structured payment system and developing standardized requirements for those providing a therapeutic level of care

for these children, Virginia will be able to ensure greater placement stability for children in foster homes. Placement stability supports children's ability to establish trust with their foster parents and is correlated with decreased time in foster care, and increased sense of self esteem and self-responsibility. Foster parents will be better trained to maintain the child in their home despite problems the child may exhibit and support children's connection to their biological families and the goal of reunifying children in care with their biological family.